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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN VIDUREK, KIMBERLY VIDUREK
and JAMES VIDUREK,

Plaintiffs,

-against-

PIM POLLEN, MARGARETH DE WIT,
ALESSANDRO DONETTI, N CASSADINE,
J MELENDEZ, SUSAN LAMASTRO,
JEANETTE WILLET, FRANK J CHAN,
CHARLES P. RETTIG, and BOBBI S
MARTIN,

Defendants.

NOTICE OF REMOVAL

from the Supreme Court of the State of
New York, County of Dutchess, Index
No. 2020-610

Defendants Charles P. Rettig, Commissioner of the Internal Revenue Service (“IRS”) and IRS employees Nicole Cassadine, Susan Lamastro, Jeannette Willet, Frank Chan, and Bobbi S. Martin (together the “Federal Defendants”) by their attorney, Audrey Strauss, Acting United States Attorney for the Southern District of New York, hereby remove the above-captioned action to the United States District Court for the Southern District of New York. The grounds for removal are as follows.

1. On or about July 21, 2020, plaintiffs John Vidurek, Kimberly Vidurek and James Vidurek (“Plaintiffs”) commenced this action against, *inter alia*, the Federal Defendants, in the

Supreme Court of the State of New York, Dutchess County, by the filing of a Summons and Complaint, Index No. 2020-610, on July 21, 2020 (the “Action”). A true and correct copy of the summons and complaint is attached as Exhibit A.

2. The Action arises in connection with the IRS’s collection of certain unpaid federal income taxes. Specifically, one of the three Plaintiffs (the complaint does not specify which one) was allegedly due to receive from the IRS a refund of \$813.00 for tax year 2019. Ex. A, Complaint, at 5. Instead of remitting this refund, the IRS applied the funds to past due federal tax obligations, which, according to Plaintiffs, was illegal. *Id.* According to Plaintiffs, despite notifying Defendants of this alleged error, no corrective action was taken. *Id.* at 3. As a result, Plaintiffs commenced the Action. *Id.* at 7. For relief, Plaintiffs seek to recover the amount of the tax refund, \$813.00, as well as court fees of \$2,000, legal research fees of \$2,400, and \$3,240 from each Defendant for the alleged violation of Plaintiffs’ civil rights. *Id.* at 3-4.

3. Plaintiffs purport to challenge acts and conclusions taken by the Federal Defendants in connection with the assessment and collection of federal income taxes. Because the IRS, which is part of the U.S. Department of the Treasury, is an agency of the United States, and this action relates to acts performed under color of such office, this action may be removed to federal court pursuant to 28 U.S.C. § 1442(a)(1).

4. Removal pursuant to 28 U.S.C. § 1442(a)(1) is timely under 28 U.S.C. § 1446(b). Section 1446(b)(1) authorizes removal “within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.” 28 U.S.C. § 1446(b). The initial pleading

was filed in New York state court on July 21, 2020. Because this removal is within 30 days of the date that Plaintiffs filed the complaint, it is timely. Moreover, neither the United States Attorney's Office for the Southern District of New York nor the IRS has a record of being served with the summons or complaint.

5. The Federal Defendants will promptly file a copy of this Notice of Removal with the Clerk of Court, Supreme Court of the State of New York, Dutchess County.

6. No previous application for removal of this action has been made.

7. The submission of this notice of removal is solely for the special purpose of removing this action to the appropriate federal court and is not a general appearance by the Federal Defendants. This submission does not constitute a waiver of any defense available to the Federal Defendants, including any defense under Rule 12 of the Federal Rules of Civil Procedure.

Dated: New York, New York
August 20, 2020

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